PG MD YAAKUB PG HASHIM & ORS

v.

AK MAHRUP PG HASHIM

HIGH COURT OF BRUNEI DARUSSALAM
DENYS ROBERTS CJ
[ORIGINATING SUMMONS NO: 2 OF 1995]
13 MARCH 1996

CIVIL PROCEDURE: *Appeal - Notice of - Whether time begins to run from date of judgment or date of receipt by parties - Brunei High Court Rules, O. 56(1) & (3)*

SUCCESSION: *Executors - Executor de son tort - Remuneration for work done - Whether beneficiary who does work for benefit of all beneficiaries entitled to reasonable remuneration - Whether only entitled to expenses - Brunei High Court Rules, O.43(6)*

SUCCESSION: *Power of Attorney - Revocation - Power of attorney expressed to be for 'lifetime' of donee - Whether could be unilaterally revoked - Whether agreement by both parties necessary - Powers of Attorney Act (Cap 13), ss. 2, 3 & 4*

The parties to the action were siblings who were co-owners of a piece of land. In 1972, the defendant took the initiative to develop the land by making and obtaining all the necessary enquiries, applications and approvals. In 1986, the plaintiffs granted him a Power of Attorney ('PA') authorising him to complete the development of the land. The PA was expressed to be 'irrevocable during the lifetime' of the defendant. Subsequently, 28 units of shophouses were built on the land, of which 17 were leased to the developer of the shophouses for 60 years, after which they were to revert to the plaintiffs and defendant. The other 11 units were transferred to the plaintiffs and defendant. In pursuance of the PA, the defendant leased 10 of the 11 units to tenants on behalf of the plaintiffs and himself and retained one unit ('the Unit') as a reward for his past efforts and as a management office. From October 1992, the defendant paid himself a salary. He placed in fixed deposit the money received as deposits on rentals and put part of the rents received on the 10 units into a maintenance fund before distributing 'dividends' to the plaintiffs and himself. The plaintiffs wished to dispense with the defendant's services and sought a revocation of the PA, the taking of accounts and an order for the payment of any sums due to them on the taking of such accounts. The Senior Registrar held, *inter alia,* that the defendant should not retain the Unit for himself and that it was the property of all the plaintiffs and defendant. The Senior Registrar

also held that the accounts were sufficient and although the defendant was not entitled to pay himself a salary, he was entitled to a reasonable remuneration for his efforts, and suggested a full property manager's fee. She held that the sums which he had taken as his salary was to be refunded and divided amongst the plaintiffs and defendant, and ordered the plaintiffs to provide the court with a 'report' setting out what would be reasonable remuneration.

The plaintiffs appealed on the ground that under O. 43(6) of the Brunei High Court Rules ('BHCR'), the Senior Registrar should only have taken into account the defendant's expenses and that she was wrong to suggest a full property manager's fee for the defendant. The Senior Registrar's judgment dated 15 February was received by the parties on 26 February and the notice of appeal was filed on 29 February 1996. The defendant submitted that the notice of appeal had been filed out of time as O. 56(3) of the BHCR provides for the notice to be issued within five days of the judgment.

Held:

[1] The five day period for the issue of the notice of appeal under O. 56(3) should begin to run only from the date on which the judgment is made available to the parties. Thus the notice of appeal in this case was issued in time.

[2] Section 4 of the Powers of Attorney Act (Cap 13) provides that a PA continues in force until notice in writing of the revocation is given by the donor or the donee renunciates the PA, 'so far as may be compatible with the terms of such instrument'. In this case, the PA was given for the lifetime of the donee. There was no provision in the PA itself for an earlier termination of it. Therefore, however dissatisfied the plaintiffs were with the performance of the defendant, there was no way in which the PA could be revoked, short of an agreement by both parties that the PA should no longer apply.

[3] The Senior Registrar was correct in holding that if other beneficiaries have benefited from the work done, that would give rise to an obligation to pay reasonable remuneration. However, as the defendant had not devoted all of his time to the administration of the property but had been employed elsewhere, the Registrar's order was amended to allow the defendant only a percentage of a property manager's fee.

[Appeal allowed in part; no order as to costs.]

Cases referred to:
In re Shaik Ramzan bin Abdullah Basarawi [1951] 17 MLJ 93 ***(foll)***
Re Worthington, Ex parte Leighton and Anor v. Macleod [1954] 1 All ER 677 ***(foll)***

Legislation referred to:
Power of Attorney Act (Cap. 13) [Brunei], ss. 2, 3, 4, 6
Rules of the High Court [Brunei], O. 43(6), O. 56(1), (3)

For the appellants - Sivabalan
For the respondent - Abang Zen (Lisa Tan with him)

Reported by Anne Khoo

JUDGMENT

Roberts CJ:

This was an appeal by the plaintiffs against the judgment of a Senior Registrar ('SR').

The judgment was dated 15 February. It was not sent to the parties, who received it only on 26 February.

Order 56(3) of the Brunei High Court Rules ('BHCR') provides for a notice of appeal to be issued "within five days after the judgment, order or decision was given or made".

The notice of appeal of the plaintiffs was filed on 29 February. This was outside the period of five days prescribed by O. 56(3).

However, a decision is often given at the conclusion of the hearing of an appeal, and judgment is given to the parties some days later.

It is not until the judgment is available to the parties that the latter can decide whether or not an appeal is necessary.

In this instance, no judgment was given at the end of the hearing on 15 January 1996. It was issued on 15 February 1996, though not made available to the parties until some days later.

I therefore think that the five days for the issue of a notice of appeal should begin to run only from the date on which the judgment of a Registrar is made available to the parties.

The appellants submitted their notice of appeal to the High Court Registry on 29 February. A date for the hearing of the appeal was given by a Senior Registrar on 9 March 1996.

I do not think this gap can be allowed to prejudice the appellant. All that matters, in my view, is that the notice of appeal under O. 56(1) of the BHCR should be given to the High Court Registry within five days after the judgment concerned is issued to the appellant.

Background

This is an unfortunate family disagreement between the defendant and his brothers and sisters who are the plaintiffs.

The brothers and sisters are the co-owners of the property at EDR 7783, Lot 8197. A building, known as the Kompleks Warisan, has been built on it.

From about July 1972, the defendant took the initiative in the development of the land, on which nothing had at that time been built.

He carried out or obtained the necessary preliminary enquiries, applications and approvals. On 3 July 1986, the plaintiffs granted to him a Power of Attorney ('PA') registered as 474/86, authorising him to complete the development of the land.

On 7 July 1989, the defendant reached an agreement with the developers for the construction of 28 units of three storey shop houses. Of these 17 were to be let to the developers on 60 year leases, after which ownership would revert to the family. 11 units were to be transferred to the defendant and plaintiffs.

In pursuance of the PA, the defendant leased 10 of these remaining units to tenants on behalf of the plaintiffs and himself. He retained Unit 21A as a reward for his past efforts and as a management office.

From October 1992 onwards, the defendant paid himself a salary. He put on time deposit the money collected as deposits on rentals. He put part of the rent received on the other 10 units into a maintenance fund before he distributed "dividends" to the plaintiffs and himself.

The plaintiffs, who assert that they wish to dispense with the defendant's services, sought a revocation of the PA, the taking of accounts and an order for the payment of any sums found due to them on the taking of such accounts.

Power Of Attorney

This is expressed in the PA itself to be "irrevocable during the life time of our Attorney" (the defendant).

Is such a power of attorney ('PA') revocable at the option of the donors in spite of the clear words of the PA itself?

I do not think that s. 6 of the Powers of Attorney Act ('Cap. 13') is of assistance, since it deals only with the position of a purchaser, where a PA is expressed to be irrevocable for a fixed time specified in the PA.

In this case, however, it is necessary to refer to s. 4 of Cap. 13 which is in these terms:

> Every instrument purporting to create a power of attorney which has been or of which an office copy or a true copy has been deposited in the office of the Registrar in accordance with s. 3, whether before or after the commencement of this Act shall, so far as the said instrument is valid and so far as may be compatible with the terms of such instrument, continue in force until notice in writing of the revocation thereof by the donor, or of the renunciation thereof by the donee, has been deposited in the said office or either the donor or the donee has died or the donee has become of unsound mind, or the donor has been adjudicated an insolvent or of unsound mind or a receiving order has been made against him in bankruptcy.

It was argued that a PA was not enforceable unless consideration for it had been given. I do not accept this contention. Many PA's are given without consideration. I do not think that this affects their validity.

If a PA satisfies s. 2 of Cap. 13 and is deposited in the office of the Minister as required by s. 3 of Cap. 13, it will be valid, whether or not consideration was given and whether or not the PA was given by deed.

Section 4 of Cap. 13 continues the PA in force, until notice is given by the donor, or the donee renunciates the PA, "so far as may be compatible with the terms of such instrument".

I do not think that this entitles the donor of a PA to give notice, before the end of a fixed, or other, term specified in the PA itself. Any attempt to do so would not be compatible with the terms of the PA.

In this instance, the PA was given during the lifetime of the donee. There was no provision in the PA itself for an earlier termination of it. However dissatisfied the donors of the PA may now be with the performance of the donee, in relation to the family property which is the subject of the PA, I fear that there is no way in which the power of attorney can be revoked, short of an agreement by both parties that the PA shall no longer apply.

Allowances To Defendant

No issue was taken by the appellants as to finding of the SR that the accounts of the complex were sufficient, or as to the other matters on which she ruled on p. 10 of her judgment. Nor was there a challenge of her finding that the respondent/defendant should not retain Unit A/21 for himself and that this unit was the property of all nine appellants and the respondent.

The second ground of appeal was limited in that the appellant took issue only with that part of the judgment of the SR which dealt with the remuneration of the defendant.

In her judgment the SR directed the plaintiffs to provide the court with a "report", setting out their view of what would be reasonable remuneration for three periods.

For this purpose, she divided the periods as follows:

(a) from 1972 to 1989, "the initial period" for which she found that the defendant was entitled to a nominal remuneration;

(b) from 1989 to 1992, "the construction period", for which she found that the defendant was entitled to "a percentage of the fee of a project manager";

(c) from 1992 onwards, the letting out period, for which she found that the defendant was entitled to "a full property managers fees".

The plaintiffs also submitted that, under O. 43(6) of the BHCR, the SR should have taken into account only the expenses incurred by the defendant.

In view of the uncontested fact that the defendant had supervised the development of the land, from an empty area to a commercial property, I think that the SR was correct in holding, in accordance with *In re Shaik Ramzan bin Abdullah Basarawi* [1951] 17 MLJ 93 that if other beneficiaries have benefited from the work done this gives rise to an obligation to pay a reasonable remuneration.

The SR also relied on *Re Worthington, Ex parte Leighton and Another v. Macleod* [1954] 1 All ER 677, in which the court held that it had an inherent jurisdiction to allow remuneration in a proper case.

Clause 5 of the PA allows the defendant to pay "expenses and other outgoings". The SR finds that this did not authorise the defendant to draw a salary for his services and that the sum which he took as salary was to be refunded and divided among the plaintiffs and the defendant.

She did, however, ask the plaintiffs to submit a report, setting out what would be a "reasonable remuneration" for the defendant's work and time devoted to the property.

This is a practical answer to an assessment of the worth of what the defendant did. I agree that, while he may not pay himself a salary, he should receive a fair remuneration for his services, either with the agreement of the plaintiffs, or under an order of the court to that effect.

The plaintiffs did not take objection to the recommendation that, during the initial period, 1972 to 1989, the defendant should receive only a nominal remuneration, nor with the recommendation that the defendant should receive a percentage of the fee of a project manager.

They did, however, submit that it was wrong to suggest, as the SR did, that the defendant was entitled to a full property manager's fee. They cited one of the defendant's affidavits in which he states that he is also working for RTB and would only be able to devote part of his time to the administration of the property.

In view of this, I think it would be proper to amend the SR's Order to this restricted extent, namely by her reference to "a full property manager's fee" being changed to "a percentage of a property manager's fee" in para. (c) of p. 13 of her judgment. Otherwise, her Order stands. The appeal succeeds only to this limited extent.

There will be no order as to costs.